

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 89096-001-SF

v

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
This 4th day of June 2008
by Ken Ross
Commissioner

ORDER

I

PROCEDURAL BACKGROUND

On April 10, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under Public Act No. 495 of 2006, MCL550.1951 *et seq.* The Commissioner reviewed the material submitted and accepted the request on April 17, 2007. As required by section 2(2) of Act 495, the Commissioner conducts this external review according to the provisions of the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.*

The Commissioner assigned the case to an independent review organization (IRO) because the case involved medical issues. The IRO provided its analysis and recommendation to the Commissioner on May 1, 2007.

II

FACTUAL BACKGROUND

The Petitioner receives health care benefits from Blue Cross and Blue Shield of Michigan

(BCBSM) through XXXXX, a self-funded group. The coverage is defined in BCBSM's Community Blue Group Benefit Certificate (Certificate).

The Petitioner purchased a phototherapy unit (light box) on November 19, 2007. The cost was \$297.50. BCBSM denied payment because they consider this device experimental for treatment of the Petitioner's condition.

The Petitioner appealed BCBSM's denial of coverage. After a managerial-level conference on March 18, 2008, BCBSM maintained its denial and issued a final adverse determination dated April 1, 2008.

III ISSUE

Did BCBSM properly deny reimbursement for the Petitioner's phototherapy unit?

IV ANALYSIS

Petitioner's Argument

The Petitioner was prescribed a phototherapy unit by his doctor to treat his depression with seasonal component. He argues that phototherapy is not an experimental treatment but is mainstream medicine.

Seasonal affective disorder is a form of depression that occurs in relation to the seasons, most commonly beginning in winter. Treatment for this disorder includes antidepressant medications and talk therapy as well as light therapy using a special lamp to mimic the spectrum of light. Therefore, the Petitioner argues that his phototherapy unit or light box is medically necessary to treat his depression and is a covered benefit under the Certificate. He wants BCBSM to cover this device.

BCBSM's Argument

BCBSM cites provisions in the Certificate as the basis for its denial. Section 5, *Coverage for Other Healthcare Services*, sets forth the benefits for durable medical equipment (DME). On page 5.3 the Certificate indicates that BCBSM does not pay for DME that is considered experimental for

treatment of a patient's condition. Section 6, *General Conditions of the Contract*, indicates that a treatment is experimental if:

- Medical literature or clinical experience is inconclusive as to whether the service is safe or effective for treatment of any condition, or
- It has been shown to be safe and effective treatment for some conditions, but there is inadequate medical literature or clinical experience to support its use in treating the patient's condition

BCBSM provides coverage for light box therapy administered for treatment of neonatal jaundice. However, BCBSM does not provide coverage for light therapy administered through a light box for treatment of the Petitioner's condition because BCBSM believes the medical literature is inconclusive as to whether the treatment is effective for that condition. Further, the Food and Drug Administration has not approved the use of a light box for the treatment of the Petitioner's condition.

BCBSM believes the light box provided the Petitioner is considered experimental for treatment of his condition. Therefore, this care is not a covered benefit and BCBSM is not required to pay for it.

Commissioner's Review

The question of whether the Petitioner's light box was experimental for treatment of the Petitioner's condition was presented to an IRO for analysis as required by section 11(6) of PRIRA, MCL 550.1911(6). The IRO reviewer is a physician who is certified by the American Board of Psychiatry and Neurology and is in active practice.

The IRO physician reviewed the information provided by both parties and the relevant peer-reviewed literature on the subject of light therapy for seasonal affective disorder. Bright light therapy was developed specifically for the treatment of depression in seasonal affective disorder. However, the physiological mechanism of its therapeutic effects is unclear (as are the mechanisms of the therapeutic effects of antidepressant medications, psychotherapy, and electroconvulsive therapy).

The IRO reviewer recognized that bright light therapy has been used with success for decades and opined that it should not be considered experimental simply because large scale studies have not been conducted. Recent events in the pharmaceutical industry have made it clear that such studies are hardly likely to be undertaken absent the potential for larger scale profits to the sponsoring entity.

The balance of peer reviewed evidence supports bright light therapy as an appropriate treatment for moderately depressed patients with seasonal affective disorder such as in this case. Therefore, bright light therapy is medically necessary for the Petitioner and should be a covered benefit.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded great deference by the Commissioner; it is based on extensive expertise and professional judgment. The Commissioner can discern no reason why that judgment should be rejected in the present case. Therefore, the Commissioner accepts the conclusion of the IRO and finds that the bright light therapy using the light box that was provided the Petitioner is not experimental and is a covered benefit under the certificate.

V ORDER

The Commissioner reverses BCBSM's April 1, 2008, final adverse determination because the Petitioner's phototherapy (bright light therapy) is not experimental and is a covered benefit. BCBSM is required to cover the Petitioner's light box device for providing phototherapy within 60 days and provide the Petitioner proof of payment within seven days after payment is made.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI

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